

**PROPERTY ASSESSMENT APPEAL BOARD**  
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2016-077-00125R

Parcel No. 221/00153-278-102

**Copper Wynd Townhouse Owners Association,**

Appellant,

**vs.**

**Polk County Board of Review,**

Appellee.

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**Introduction**

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on October 23, 2017. James Sarcone, III of Hubbell Realty Company represented the Copper Wynd Townhouse Owners Association (Copper Wynd). Assistant Polk County Attorney Mark Taylor represented the Board of Review.

Copper Wynd owns a residential classified property located at 5200 Sunridge Drive, Unit B in Pleasant Hill. The property's January 1, 2016 assessment was \$186,700, allocated as \$100 in land value and \$186,600 to building value. (Certification). This was a change from the 2015 assessment.

Copper Wynd petitioned the Board of Review claiming the assessment was not equitable as compared to the assessments of other like property; the property was assessed for more than the value authorized by law; and there was an error in the assessment under Iowa Code sections 441.37(1)(a)(1)(a, b, d). The Board of Review denied the petition.

Copper Wynd appealed to PAAB reasserting its claims that the property is assessed for more than authorized by law and that there is an error in the assessment.

## General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2016). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* Conversely, sale prices of abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the factors that distort market value, including but not limited to foreclosure or other forced sales. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

In Iowa, all real property is subject to taxation unless it qualifies for an exemption. Iowa Code §§ 427.1, 427.13. "The assessor typically values property as an estate in fee simple, unless statutes or administrative rules dictate otherwise." INT'L ASS'N OF ASSESSING OFFICERS, PROPERTY ASSESSMENT VALUATION 12 (3d ed. 2010). Iowa courts have held that "the proper measure of the value of property is what the property would

bring if sold in fee simple.” *I.C.M. Realty v. Woodward*, 433 N.W.2d 760,762 (Iowa Ct. App. 1988); *Merle Hay Mall v. City of Des Moines Bd. of Review*, 564 N.W. 2d 419 (Iowa 1997). See *Oberstein v. Adair Cnty. Bd. of Review*, 318 N.W.2d 817, 819 (Iowa App. Ct. 1982) (“All outstanding interests are taxed as a whole and measured by the value of the fee.” (citing *Lucas v. Purdy*, 120 N.W. 1063, 1064-65 (Iowa 1909))). The fee simple interest encompasses all rights in the property, free and clear of all encumbrances, except those reserved by the government. INT’L ASS’N OF ASSESSING OFFICERS, at 12.

## **Findings of Fact**

The subject property is a one-story clubhouse built in 2001. The clubhouse is listed as having 2592 square feet of gross building area<sup>1</sup> including 1400 square feet of basement finish; and two porches. The site is 0.223 acres. (Ex. A). The clubhouse is owned by the Copper Wynd Townhouse Owners Association. The owners of the development’s individual townhomes are members of the Association. (Ex. H).

Sarcone testified that the clubhouse and surrounding townhomes had originally been organized as a condominium horizontal ownership regime. The form of ownership then changed to a townhouse association prior to the 2016 assessment. Sarcone believes because nothing physically changed and therefore the clubhouse should not have seen an increase in its assessment.

In 2015 the clubhouse had an assessed value of \$0; then in 2016 the assessed value increased to \$186,700. (Certified Record, 2016 Assessment Roll). Despite the increase in the clubhouse’s assessment, Sarcone notes the townhouse unit owners did not see a corresponding decrease in their assessments to account for the previously included allocated value of the common elements. Sarcone argues there is an error in the townhouse units’ 2016 assessments, which should have declined as a result of the subject property being assessed as a separate parcel. Because the townhouse units’ assessments were not reduced and the clubhouse was reassessed, Sarcone asserts

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<sup>1</sup> The property record card reports 2592 square feet of gross building area. However the attached sketch, photo, and full basement would indicate a gross building area of 2928 square feet.

the owners are being double-taxed because the owners' association dues pay to maintain the clubhouse, including payment of property taxes. (Ex. H). PAAB notes the townhouse units identified by Sarcone have not been appealed to PAAB. The only property before PAAB at this time is the clubhouse.

Amy Rasmussen, Director of Litigation for the Polk County Assessor's Office, testified for the Board of Review. Rasmussen explained that under a condominium regime, the common improvements are not assigned an assessed value; but rather the replacement costs of the improvements are absorbed into the assessment of the individual units. In contrast, under a townhouse association ownership the common elements are separately parceled and therefore must be valued for purposes of assessment. The IOWA REAL PROPERTY APPRAISAL MANUAL describes the differences in valuing a condominium regime versus townhouses. (Ex 1). In support of its position, the Board of Review submitted property record cards of clubhouses owned by owners' associations in Polk County that are also being valued. (Ex. A-G).

Moreover, Rasmussen noted that 2016 was not a reassessment year. For this reason, there was no change to the townhouse units' assessments; only to the clubhouse to reflect the new ownership interests as required by assessment procedures. Rasmussen concedes it would be reasonable to assume that the townhouse units' assessments could have seen a corresponding decrease as a result, but this did not happen. She stated in this situation, no line item was given to each of the townhouse units attributing a value for the common area elements and without doing a revaluation on those properties there was not a clear indication of what the value should have been. In response to a cross-examination question, Rasmussen indicated the common area element fractional interest may not have been removed from the townhouse units' assessments for the 2016 assessment.

Sarcone did not submit any evidence of the fair market value of the clubhouse, such as recent sales adjusted for differences or a cost analysis.

## **Analysis & Conclusions of Law**

Copper Wynd asserts there is an error in its clubhouse's assessment and that it is over assessed.

Prior to 2016, the clubhouse and individual townhouse units had been valued as a horizontal property regime under Iowa Code section 499B.11. Section 499B.11 specifies the value of an apartment or in this case, a townhouse unit, “. . . includes the value of its appurtenant share or percentage of the land, general common elements, and limited common elements” of the horizontal property regime. The subject clubhouse likely would be considered a general common element under the definition in section 499B.2.

The parties agree the horizontal property regime was dissolved in 2015. Thus, the townhouse units and clubhouse were no longer to be valued under the provisions of Chapter 499B for the 2016 assessment. Nonetheless, the townhouse units were not revalued in 2016, but the clubhouse's assessment increased from \$0 to \$186,700.

### **i. Error Claim**

Under Iowa Code section 441.37(1)(a)(1)(d), an aggrieved taxpayer or property owner may appeal their assessment on the basis “[t]hat there is an error in the assessment.” “When this ground is relied upon, the error may include but is not limited to listing errors, clerical or mathematical errors, or other errors that result in an error in the assessment.” § 441.37(1)(a)(1)(d).

Copper Wynd asserts an error occurred when the assessor valued the clubhouse while the townhouse units in the development did not receive a corresponding assessment decrease reflecting the prior undivided interest of the common areas that had been allocated to their assessments under the horizontal property regime. If those units' 2016 assessments were valued in excess of their fee simple interest, that may have been an error as it relates to those properties. However, PAAB does not have jurisdiction over townhouse units' assessments as they were not appealed.

Conversely, Copper Wynd asserts if the townhouse unit assessments are not in error, then the clubhouse's assessment is in error and should remain valued at \$0.

Copper Wynd is essentially requesting the clubhouse be valued at something other than its fee simple interest, which is contrary to law.

Acknowledging the possibility that the Assessor may have valued the common area elements' interest twice, PAAB concludes there is a failure of proof to show that occurred in this case. If the townhouse units' assessments exceed their fee simple fair market values, this could suggest the assessments include the common area elements' interest.<sup>2</sup> In turn, this would then indicate the common area elements' interest is being double-taxed.

Here, Copper Wynd did not submit evidence of the townhouse units' fee simple market value. Thus, there is insufficient proof to show double-taxation has occurred. Considering the foregoing, PAAB finds Copper Wynd has not shown an error in the clubhouse's assessment.

ii. Overassessment Claim

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Copper Wynd asserts the clubhouse should be valued at \$0. Copper Wynd did not submit any evidence of the fair market value of its property, such as recent sales adjusted for differences or a cost analysis.

Viewing the record as a whole, we find Copper Wynd failed to show there is an error in the clubhouse's assessment or that it is over assessed.

## **Order**

PAAB HEREBY AFFIRMS the Polk County Board of Review's action.

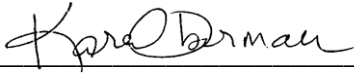
This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2017).

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<sup>2</sup> We acknowledge a disparity between assessments and market values can also be caused by other factors. It is likely a paired-sales analysis would need to be conducted to determine the townhouse units' fee simple fair market value.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

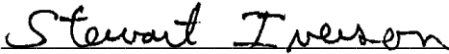
Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Presiding Officer



Camille Valley, Board Member



Stewart Iverson, Board Chair

Copies to:

Jim Sarcone by eFile

Mark Taylor by eFile